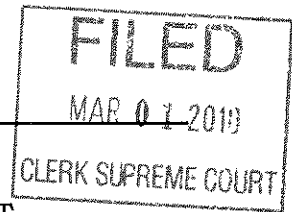


IN THE SUPREME COURT OF IOWA



IN THE MATTER OF THE
COMMISSION ON CONTINUING
LEGAL EDUCATION

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2008-2009 REPORT

TO THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF
IOWA:

This report of the Commission on Continuing Legal Education is submitted as required by Iowa Court Rule 41.2 for the period January 1, 2008 through December 31, 2009. The financial reports of the Commission as prepared by Brooks Lodden, P.C., covering the fiscal years ending June 30, 2008, and June 30, 2009, were submitted to the Court separately. The financial reports each include a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff. Examination of the *Management Discussion & Analysis* statements is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

THE COMMISSION

Members

Chapter 41 of the Iowa Court Rules establishes the Commission on Continuing Legal Education. Iowa Court Rule 41.2 provides for the appointment of twelve members to the Commission, two of whom are not to be lawyers. During the period covered by this report the non-lawyer members of the Commission included Russell Glasgow of West Burlington, Dr. Lloyd A.

Stjernberg of Des Moines, Steve Waterman of Osceola, and Paul Feeney of Des Moines. The lawyer members of the Commission during the period covered by this report included:

The Honorable David L. Christensen, Ellston
Sarah W. Cochran, Fairfield
Gary R. Faust, Council Bluffs
William J. Miller, Des Moines
Debra L. Hulett, Des Moines
Renee V. Sneitzer, Coralville
Sheldon F. Kurtz, Iowa City
Kristen M. Ollenburg, Mason City
Loan H. Hensley, Sioux City
Kathleen A. Kleiman, Cedar Rapids
Laurie K. Doré, Des Moines
Myron L. Gookin, Fairfield

Sarah W. Cochran served as chairperson of the commission from July of 2005 until expiration of her final term on June 30, 2009. Judge David L. Christensen was appointed chairperson of the Commission on July 7, 2009. Russell Glasgow, Sheldon F. Kurtz and Lloyd A. Stjernberg also completed terms during the period covered by this report.

ACCREDITATION

Policies

Although the Commission considers all applications for accreditation on an individual basis, certain general policies regarding accreditation have been developed by the Commission. The current accreditation policies of the Commission are set out at Appendix A to this report.

Procedure

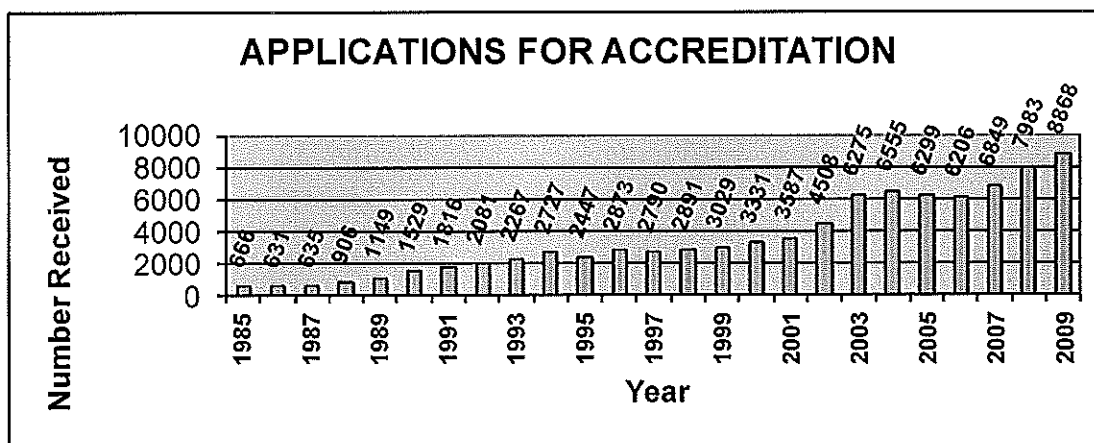
The Commission maintains two accreditation divisions of five members

each, which consider applications for accreditation of programs. In 1984, the Commission granted to the Executive Director the authority to approve individual accreditation requests that clearly would be approved under the rules and the general accreditation policies of the Commission. A list of all requests approved by the Director or by the Commission is maintained on the Commission's Internet web site¹ and is updated at least weekly. When accreditation of a particular event appears unlikely based on past Commission practices, the Director issues an informal denial of credit, explains the basis for the denial and advises the applicant of the procedure for appeal. If the applicant desires consideration by an accreditation division of the Commission, the issue of accreditation is referred to one of the two accreditation divisions for review. Accreditation matters not resolved by an accreditation division are reviewed and considered by the entire Commission at a regular commission meeting. In recent years, appeals have been relatively infrequent, such that most appeals have been considered and resolved by the entire Commission, sitting as an accreditation division at semiannual meetings.

Based on the Commission's recommendation, in 2002 the Court repealed that portion of the rules pertaining to accredited sponsor status. The status of accredited sponsor no longer exists in Iowa. Consolidated reporting by accredited sponsors after the end of a calendar year had created difficulty for Iowa attorneys who were filing their annual continuing legal education (CLE) reports at approximately the same time. The Commission and its staff believe

¹ http://www.iowacourts.gov/Professional_Regulation/Attorney_RegulationCommissions/CLE/

that accreditation on an activity-by-activity basis, before or immediately after an activity is conducted, fosters more accurate annual reporting by attorneys, and allows publication of more timely CLE accreditation information to attorneys through various means including the Internet. Based on the rule change, all CLE in Iowa now is approved on an activity-by-activity basis. Based in part on elimination of the accredited sponsor program, and in part on growth in the CLE industry, the number of applications for accreditation filed each year has increased. During 2008, 7,983 applications for accreditation were considered. During 2009, 8,868 applications for accreditation were considered. As the following table indicates, these numbers represent an increase in the number of applications as compared to prior years.



Of the 7,983 individual applications for regular or legal ethics accreditation considered in 2008, 7,450 applications were approved in whole or part. Informal consultation with applicants resulted in denial of credit for 326 applications. The Commission considered seven applications, resulting in denial of regular credit for all seven, and denial of ethics credit for five of the seven

applications.

Of the 8,868 individual applications for regular or legal ethics accreditation considered in 2009, 8,089 applications were approved in whole or part. Informal consultation with applicants resulted in denial of credit for 259 applications. The Commission considered twelve applications, resulting in partial or complete approvals of one, denial of regular credit for ten, and denial of ethics credit for three of the twelve applications.

Computer-Based Continuing Legal Education

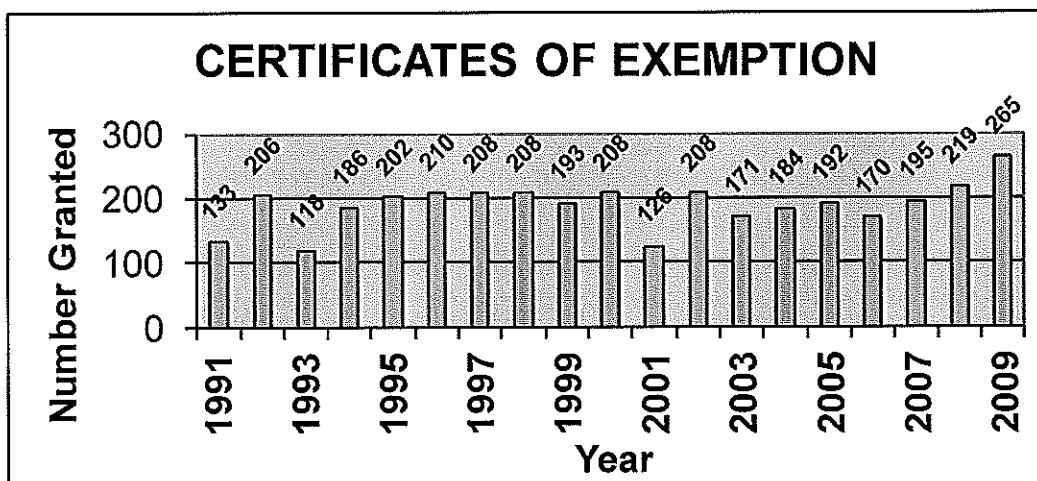
The Commission studied the area of technology-based education for several years. Based on its study, the Commission recommended in 2001 that Iowa attorneys be allowed to acquire up to six hours of CLE credit each calendar year from on-demand computer-based activities, so long as the activities are interactive. The Court approved the change, to be effective July 1, 2002 for computer-based CLE activities performed after that date.

During 2008, 266 on-demand computer-based events were approved for Iowa CLE credit. Of these 266 approvals, twenty-seven were issued for events submitted by Iowa sponsors, and the remainder were issued for events submitted by national CLE providers. During 2009, 319 on-demand computer-based events were approved for Iowa CLE credit. Of these 319 approvals, thirty were issued for events submitted by Iowa sponsors, and the remainder were issued for events submitted by national CLE providers.

COMPLIANCE

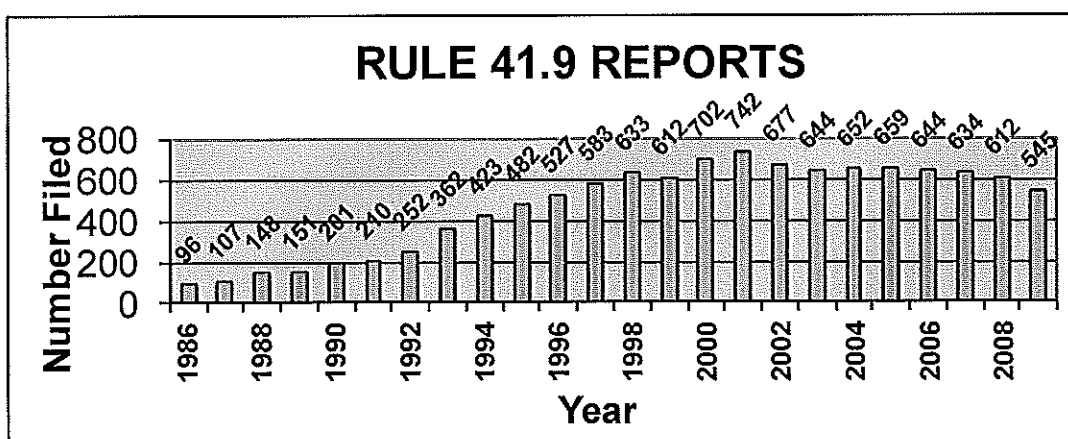
The annual report due March 1, 2008 was filed by 8,923 attorneys, each of

whom also paid the administrative fee of \$15.00. Two hundred and nineteen attorneys applied for and were granted Certificates of Exemption in 2008 pursuant to Rule 42.6. Of those lawyers previously granted Certificates of Exemption, thirty-eight obtained reinstatement to active practice status in 2008. The annual report due March 1, 2009 was filed by 8,971 attorneys, each of whom also paid the administrative fee of \$15.00. Two hundred and sixty-five attorneys applied for and were granted Certificates of Exemption in 2009 pursuant to Rule 42.6. Of those lawyers previously granted Certificates of Exemption, thirty-three obtained reinstatement to active practice status in 2009. The following table shows the number of exemptions granted each year since 1991. Exemption applications tend to increase in years when a report showing completion of the biennial ethics requirement is due, and when rule changes otherwise increase the perceived level of difficulty achieving compliance.

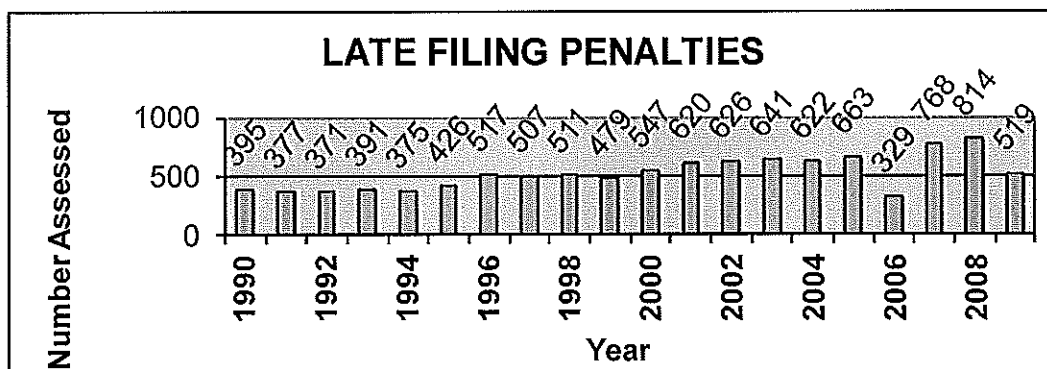


During 2008, 612 attorneys filed with the Commission the written report of compliance required by Iowa Court Rule 41.9. During 2009, 545 attorneys filed with the Commission the written report of compliance required by Iowa

Court Rule 41.9. This report must be filed by attorneys before they may hold themselves out as practicing primarily in or limiting their practice to the fields of law permitted by Iowa Rule of Professional Conduct 32:7.4(e)(2), or designate a field of practice under Iowa Rule of Professional Conduct 32:7.4(e)(1). Attorneys who designate a field of practice must have devoted in the preceding calendar year the greater of 100 hours or ten percent of their time in actual law practice for each indicated field of practice and they must have completed a minimum of ten hours of accredited continuing legal education course work in each indicated field of practice. Attorneys who hold themselves out as practicing primarily in or limiting their practice to a particular field of practice must have devoted in the preceding calendar year the greater of 400 hours or 40% of their time in actual law practice for each indicated field of practice and they must have completed a minimum of fifteen hours of accredited continuing legal education course work in each indicated field of practice. As shown in the following table, the number of lawyers filing reports under Rule 41.9 generally increased each year until 2002, when the most recent significant change in the rule took effect.



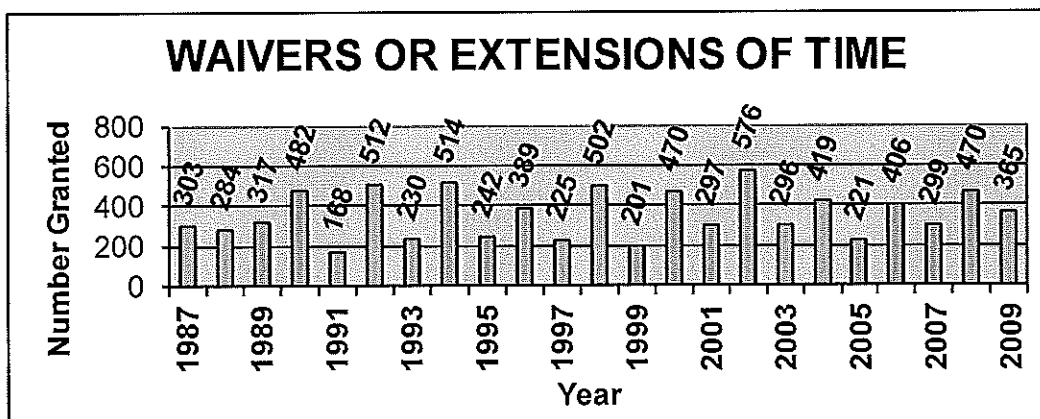
The Court adopted a rule in 1980 providing that attorneys who fail by March 1st of each year to file their annual report or pay any required annual fee will be assessed a penalty of \$25.00. Eight hundred and forty-one attorneys were assessed a late filing penalty in 2008. Effective with the January 1, 2009, the late filing penalty was increased to a minimum of \$100, increasing \$50.00 each succeeding month the report is late until a maximum penalty of \$200 is reached. Late filing penalties paid by Iowa lawyers during 2009 totaled \$70,025, paid by a total of 519 lawyers. As the following table shows, the number of lawyers paying late filing penalties generally increased through 2005. In 2006, late filing penalties decreased due to the one-time extension of the filing due date to encourage electronic filing. In 2007, the filing due date reverted to March 1st, and the number of lawyers paying late filing penalties increased substantially. During 2009, the number of lawyers paying late filing penalties declined significantly, likely due to the increased monetary amount of the penalties.



During 2008, eight attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4. During 2009, three attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4.

HARDSHIPS OR EXTENUATING CIRCUMSTANCES

A third division made up of three Commission members considers questionable applications for waivers or extensions of time in which to complete the requirements, as well as some applications for conditional reinstatement after holding a Certificate of Exemption. During 2008, 470 applications for waivers or extensions of time were approved for completion of regular CLE requirements, and 48 extensions were approved for completion of Iowa Court Rule 41.9 education requirements. During 2009, 365 applications for waivers or extensions of time were approved for completion of regular CLE requirements, and 62 extensions were approved for completion of Iowa Court Rule 41.9 education requirements. The following table shows the number of total waivers or extensions of time filed the previous twenty years. A factor contributing to the significant increase in applications filed in each even-numbered year since 1990 is that many attorneys fail to timely satisfy the biennial legal ethics component of their education requirements.



To encourage timely hardship applications, Iowa Court Rule 42.5 requires

that a \$25.00 fee be assessed all waiver or extension of time applications received after January 15th of the year following the year in which the alleged hardship occurred. In 2008, 328 applicants were assessed the \$25.00 fee for requesting a waiver or extension of time after January 15, 2008. Two hundred and fifty-seven applicants were assessed the \$25.00 waiver or extension fee during 2009.

BASIC SKILLS COURSE

On October 9, 2009, the Court adopted a requirement that all lawyers newly admitted by examination attend a basic skills course on Iowa law. The attendance requirement applies to every lawyer admitted by examination after December 1, 2008. Lawyers admitted by examination during 2009 will have two years from their actual date of admission to complete the course. Lawyers admitted by examination in 2010 and future years must complete the course within one year of their actual date of admission. The basic skills course requirement does not apply to lawyers admitted to practice on motion.

An approved basic skills course will consist of at least eight hours of instruction on Iowa law, including one hour of ethics, drawn from at least eight of the topic areas specified in the rule. Lawyers who attend the basic skills course are entitled to claim credit against their regular continuing legal education attendance requirements. The course must be reviewed and approved by the Commission on Continuing Legal Education, and the sponsor will be required to track and report attendance to the commission.

A lawyer who fails to attend the required course within the allotted time period may have their right to practice law suspended. The Commission on Continuing Legal Education is authorized to grant individual extensions of time or waivers based on hardship or extenuating circumstances.

As basic skills courses are submitted to the Commission and approved, the Commission will list them on its web page. As of the submission of this report, the Commission's staff has been advised that the Iowa State Bar Association plans to offer its first basic skills course in early 2011. The Commission is encouraging lawyers admitted during 2009 to monitor the commission web page and arrange attendance of the basic skills course at the first available opportunity.

FINANCIAL

In 1989, the Commission changed its method of accounting for income from the cash basis to the accrual basis to conform with generally accepted accounting principles. The financial reports prepared by Brooks Lodden, P.C. reflect this change. Effective with the fiscal ending June 30, 2008, the Commission altered its fiscal year to correspond with that use by state government generally. Based on that change, the Commission submitted and the Court approved the following Commission operating budget for the year July 1, 2009 through June 30, 2010.

COMMISSION ON CONTINUING LEGAL EDUCATION FISCAL YEAR 2009-2010 BUDGET

Salary & Employee Expense

Director Salary	\$24,531.28
Assistant Director Salary	\$27,465.06
Clerical Salary	\$27,480.68
Part-Time Data / Call Center Support	\$1,800.00
FICA	\$6,217.69
IPERS	\$5,404.92
Employee Insurance	\$16,341.28
Deferred Compensation	\$1,080.00
Travel Expense – Commissioners	\$1,800.00
Travel Expense – Employees	\$1,000.00
Rent	\$8,805.00
Auditing	\$4,500.00
Telephone	\$1,250.00
Copier Lease	\$650.00
Office Supplies	\$900.00
Printing	\$2,000.00
Postage	\$3,500.00
Repairs & Maintenance	\$250.00
Employer Insurance	\$1,000.00
Miscellaneous, Including Moving	\$2,000.00
Automation Support	\$2,040.00
Internet App. Maintenance & Development	\$5,000.00
Web Site Hosting Expense	\$34,000.00
Internet Payment Charges	\$8,400.00
Payroll Processing	\$335.00
TOTAL OPERATING EXPENSES	\$187,750.91
CAPITAL EXPENDITURES	\$1,500.00
TOTAL PROJECTED EXPENDITURES	\$189,250.91

Considering the funds on hand and anticipated costs of administration during the 2009-2010 fiscal year, the Court approved an administrative assessment of \$15.00 to be paid during the 2010 report filing season by each active attorney eligible to practice in this state. Funds needed for current expenses are presently maintained in an account maintained at Wells Fargo

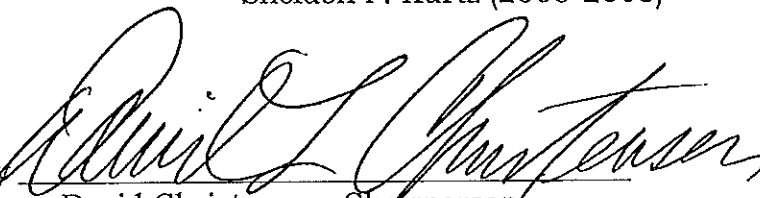
Bank N.A. in Des Moines. Funds not needed for current expenses are invested in certificates of deposit when comparative rates of return warrant such an investment.

Dated this 1st day of March, 2010.

COMMISSION ON CONTINUING LEGAL EDUCATION

Sarah W. Cochran, (2003-2009;
Chairperson 2005-2009)
Russell Glasgow (2003-2008).
Gary R. Faust
William J. Miller
Debra Hulett
Loan Hensley

The Honorable David Christenson ,
Chairperson (2009-)
Lloyd A. Stjernberg (2003-2008)
Kathleen Kleiman
Renee Sneitzer
Kristen Ollenburg
Sheldon F. Kurtz (2005-2008)

By 
David Christensen, Chairperson

Appendix A - Accreditation Policies
Report of Commission on Continuing Legal Education
Period 2009-2010

Approved at May 2004 Commission Meeting; Amended at the May 2006 Commission Meeting; Amended at the May 2008 Meeting; and Amended at the October 2009 Commission Meeting

- (1) Credit is not allowed for committee work or portions of meetings devoted to administrative matters relating to the organizations sponsoring an activity, such as the business sessions of such organizations.
- (2) Credit is not allowed for sessions that involve a combined meal and presentation, e.g., lunch periods with speakers. The standard is that instruction must be a separate and distinct portion of the program, presented in an educational environment. Credit will be allowed if the sponsor splits the time into separate meal and instruction periods, demonstrates that the meal will not intrude on the presentation time, and otherwise shows the existence of an appropriate educational environment.
- (3) Credit is allowed both to speakers and those in attendance at continuing legal education activities. Speakers at an accredited continuing legal education activity are permitted credit for any actual time required to make the presentation, including panel discussions, question-and-answer periods and similar activities. However no additional credit is given to speakers for time spent in preparing their presentation.
- (4) The granting of credit to instructors or attending lawyers for instruction presented to non-lawyer or predominantly non-lawyer audiences depends on a variety of factors, including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation, and the level of attorney participation. Although attendance at these courses may be justified as beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course integrally relates to the practice of law and was of sufficient quality and rigor to meet other established standards for accreditation.
- (5) A person admitted to practice may obtain credit for taking or auditing a law school course whether at a graduate or regular law school level. A copy of the law school transcript is required when a

lawyer requests credit for courses completed incident to a graduate program in law (e.g., L.L.M.) Contact hours are computed based on individual session duration and number of class sessions during the semester. Generally, the number of computed hours will be sufficient to satisfy the general CLE requirement for the year the courses are taken, and provide a 30 hour carry forward, which is the maximum. Ethics requirements still must be separately satisfied.

- (6) Whether or not a continuing legal education activity is sponsored by a non-profit or profit-making organization is considered by the Commission to be irrelevant to accreditation; however, the Commission looks very carefully at courses given by sponsors who appear to be motivated in giving such courses by a desire to assemble a group of attorneys in order to expose the attorneys to the services (other than CLE activities) the sponsor may be able to provide such attorneys or their clients.
- (7) Courses directed primarily at increasing the profits of the practice of law are deemed by the Commission not to meet the standards of Rule 42.3(1)(a) of the Commission's regulations, which requires that the educational activity "contribute directly to the professional competency of an attorney". However, continuing legal education activities dealing with law office management which are directed primarily at improving the quality of or delivery of legal services are deemed by the Commission to be accreditable.
- (8) Except in situations in which permission is specifically granted on applications based on hardship or extenuating circumstances, no credit is allowed for self-study of any kind whether or not aided by video or audio recordings.
- (9) "In-house" activities, that is programs or instruction given by a company or firm for its own employees are considered on a case-by-case basis.
- (10) Video tapes or remote television presentations are generally accredited only if there is a speaker or instructor present at the time and place of showing to answer questions and discuss the presentation with participants in the activity.
- (11) Programs involving non-legal subject matter or courses covering both non-legal subject matter and related common legal subjects designed for attorneys or both attorneys and other disciplines are not ordinarily given prior CLE accreditation. Lawyers may apply for post accreditation after attending such courses. The granting of

credit for courses containing non-legal subject matter which are indicated as being integrally related to the practice of law will depend upon a variety of factors including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation and attorneys participation. While attendance at these courses may be justified as being beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course does integrally relate to the practice of law and was of sufficient quality and content to meet other established standards for accreditation.

- (12) Programs consisting primarily of instruction on the operation or benefits of a particular proprietary software program are not eligible for credit, because they do not include sufficient substantive legal content. Programs that combine instruction on the operation and benefits of a particular program with substantive legal content will be considered on a case-by-case basis, with the burden on the applicant to demonstrate that the primary content pertains to common legal subjects or other subject matters integrally related to the practice of law.
- (13) The area of legal ethics shall include designated instruction intended for and directed to attorneys or judges and cover topics related to or specifically discussed in the disciplinary rules or ethical considerations of the CODE OF PROFESSIONAL RESPONSIBILITIES FOR LAWYERS, the canons of the CODE OF JUDICIAL CONDUCT, provisions of the MODEL RULES OF PROFESSIONAL CONDUCT, or provisions of any comparable ethics or professional responsibility code in the jurisdiction where the instruction is presented. Ethics must be a separate, designated session. Ethics credit is not approved for a part of a class or session (so-called "imbedded ethics"), unless the sponsor designates a specific time period for the ethics portion of the class or session. The content description or handout materials must specifically refer to and be based on the disciplinary rules or judicial canons, or must bear a direct relationship to the Code of Professional Responsibility or the Canons of Judicial Ethics. The commission traditionally has not issued ethics credit for instruction on ethics requirements for government employees generally, such as Iowa Code chapter 68B (Conflicts of Interest of Public Officers and Employees) or its federal statutory or agency counterparts.
- (14) Rule 42.3(1)(d) provides specific authority for accreditation of computer-based transmission events, provided they are interactive. The definition of what qualifies as interactive was left to the

Commission to develop as policy, so that the interpretation can mature as technology matures and Commission experience dictates. Current policy is as follows:

(a) For computer-based transmissions presented live, the interactive requirement will be met if there is a method for the viewers to send their questions in to the presenters and hear the answers to (or discussions of) those questions live during the presentation. Computer-based transmission presented live must consist of at least a live streaming audio component like that used for live telephone CLE events. Most events in this category also incorporate a video component, in either a streaming video format or a moving slide presentation keyed to the audio transmission.

(b) For computer-based transmissions conducted on a demand basis, the Commission's policy defines "interactive" as requiring an interactive forum which reviews all prior questions and answers during the actual presentation, and also allows submission of new questions or comments for response within two business days by the program instructors. Computer-based transmissions conducted on a demand-basis must incorporate both a streaming audio component and a video component. The video component must consist of streaming video or a moving slide presentation keyed to the audio, or both.

- (15) Acceptance of Fax Requests: Requests need not be submitted with an original signature. Requests submitted by facsimile transmission are routinely processed and approved, so long as the necessary information is present.